

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 1036

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

PATSY G. TRUJILLO

AN ACT

RELATING TO WATER; PROVIDING FOR CONSERVATION OF WATER
RESOURCES; ENACTING THE WATER CONSERVATION INCENTIVES ACT;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 6 of this act may be cited as the "Water Conservation
Incentives Act".

Section 2. [NEW MATERIAL] FINDINGS-- PURPOSE. --

A. The legislature finds that the conservation and
efficient use of water:

- (1) benefits all water users;
- (2) provides water to satisfy current and
future needs through reduction of waste;
- (3) improves water quality by reducing

Underscored material = new
[bracketed material] = delete

1 contaminated return flow;

2 (4) reduces erosion; and

3 (5) provides increased water supplies.

4 B. The purpose of the Water Conservation Incentives
5 Act is to promote conservation of limited water resources by
6 providing incentives to water users to conserve water and to
7 enhance the public interest by increasing streamflows by means
8 of reducing diversions through application of conservation
9 measures.

10 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
11 Water Conservation Incentives Act:

12 A. "conservation" means the reduction of water use
13 while exercising a water right through the application of
14 conservation measures, including:

15 (1) improvements in irrigation methods and
16 conveyances;

17 (2) conversion to low-water-use plumbing
18 fixtures or industrial processes; and

19 (3) utility rate pricing calculated to reduce
20 water usage;

21 B. "conserved water" means that amount of water that
22 represents the difference between a water right and the amount
23 of water diverted to serve the same use with the application of
24 conservation measures, but does not mean water that has been
25 subjected to a change in point of diversion, place or purpose of

Underscored material = new
[bracketed material] = delete

1 use;

2 C. "consumptive right" means the amount of water a
3 water right owner is entitled to consume in a beneficial use;

4 D. "diversion right" means that amount of water that
5 a water right owner is entitled to divert from a water source in
6 order to deliver a consumptive right for beneficial use and
7 includes the consumptive right plus losses between the point of
8 diversion and point of use;

9 E. "on-farm incidental depletion" means water lost
10 to evaporation from wetted soils or plant surfaces, standing
11 water in feeder ditches or furrows or through spray irrigation;
12 and

13 F. "person" means an individual or other legal
14 entity.

15 Section 4. [NEW MATERIAL] DETERMINATION--APPLICATION OF
16 CONSERVED WATER. --

17 A. A person seeking to have a portion of a water
18 right found to be conserved water shall request the state
19 engineer to make an initial determination of conserved water.
20 The determination of conserved water may be made in conjunction
21 with an application for a change in point of diversion, place or
22 purpose of use of the portion of the right represented by the
23 conserved water. The request for a determination of conserved
24 water in conjunction with a change in point of diversion, place
25 or purpose of use of the portion of the right represented by the

Underscored material = new
[bracketed material] = delete

1 conserved water shall be pursuant to state engineer rules and
2 regulations and shall include the following information
3 regarding the proposed conservation of water:

4 (1) a description of the methods used to
5 conserve the water; and

6 (2) a statement of the amount of water that is
7 expected to be conserved.

8 B. The state engineer shall adopt and promulgate
9 rules and regulations for quantification of the water conserved,
10 proof of maintenance of conservation measures and consequences
11 of failure to maintain conservation measures.

12 C. Publication and distribution of public notice and
13 opportunity for public hearing in the event of an objection or
14 protest of the application shall be as set forth in Sections
15 72-5-5 and 72-12-3 NMSA 1978.

16 Section 5. [NEW MATERIAL] ALLOCATION OF CONSERVED
17 WATER. --

18 A. If the state engineer determines that a portion
19 of a water right is conserved water, the person with rights to
20 that conserved water may apply to the state engineer pursuant to
21 the provisions of Sections 72-5-23, 72-5-24 and 72-12-7 NMSA
22 1978 to use, lease or sell a portion of the conserved water as
23 described in Subsection B of this section.

24 B. Rights to that portion of the conserved water
25 recovered by reducing beneficial consumptive use or on-farm

Underscored material = new
[bracketed material] = delete

1 incidental depletions shall be fully available to the applicant
2 to use, lease or sell. Rights to that portion of the conserved
3 water generated through reduction of the applicant's diversion
4 right shall be allocated to one or more of the following uses:

5 (1) a conservation program as defined in
6 Section 72-1-2.2 NMSA 1978;

7 (2) protection or recovery of endangered
8 species or enhancement of riparian habitat;

9 (3) enhancement of streamflows to ensure
10 compliance with interstate stream compact obligations; or

11 (4) any other nonconsumptive use found by the
12 state engineer to be in the public welfare of the state.

13 C. Conserved water shall have the same priority date
14 as the original right.

15 D. The portion of a water right determined to be
16 conserved waters shall be exempt from forfeiture to Sections
17 72-5-28 and 72-12-8 NMSA 1978.

18 Section 6. [NEW MATERIAL] NO IMPAIRMENT.--Nothing in the
19 Water Conservation Incentives Act shall be construed to impair
20 or condemn any existing water right.

21 Section 7. Section 72-5-28 NMSA 1978 (being Laws 1907,
22 Chapter 49, Section 42, as amended) is amended to read:

23 "72-5-28. FAILURE TO USE WATER--FORFEITURE.--

24 A. When the party entitled to the use of water fails
25 to beneficially use all or any part of the water claimed by him,

Underscored material = new
[bracketed material] = delete

1 for which a right of use has vested for the purpose for which it
2 was appropriated or adjudicated, except the waters for storage
3 reservoirs, for a period of four years, such unused water shall,
4 if the failure to beneficially use the water persists one year
5 after notice and declaration of nonuser given by the state
6 engineer, revert to the public and shall be regarded as
7 unappropriated public water; provided, however, that forfeiture
8 shall not necessarily occur if circumstances beyond the control
9 of the owner have caused nonuse, such that the water could not
10 be placed to beneficial use by diligent efforts of the owner;
11 and provided that periods of nonuse, when irrigated farm lands
12 are placed under the acreage reserve program or conservation
13 reserve program provided by the Food Security Act of 1985,
14 P.L. 99-198, shall not be computed as part of the four-year
15 forfeiture period; and provided, further, that the condition of
16 notice and declaration of nonuser shall not apply to water which
17 has reverted to the public by operation of law prior to June 1,
18 1965.

19 B. Upon application to the state engineer at any
20 time and a proper showing of reasonable cause for delay or for
21 nonuse or upon the state engineer finding that it is in the
22 public interest, the state engineer may grant extensions of
23 time, for a period not to exceed [~~three years~~] one year for each
24 extension, in which to apply to beneficial use the water for
25 which a permit to appropriate has been issued or a water right

Underscored material = new
[bracketed material] = delete

1 has vested, was appropriated or has been adjudicated.

2 C. Periods of nonuse when water rights are acquired
3 by incorporated municipalities or counties for implementation of
4 their water development plans or for preservation of municipal
5 or county water supplies shall not be computed as part of the
6 four-year forfeiture statute.

7 D. A lawful exemption from the requirements of
8 beneficial use, either by an extension of time or other
9 statutory exemption, stops the running of the four-year period
10 for the period of the exemption, and the period of exemption
11 shall not be included in computing the four-year period.

12 E. Periods of nonuse when the nonuser of acquired
13 water rights is on active duty as a member of the armed forces
14 of this country shall not be included in computing the four-year
15 period.

16 F. The owner or holder of a valid water right or
17 permit to appropriate waters for agricultural purposes
18 appurtenant to designated or specified lands may apply the full
19 amount of water covered by or included in the water right or
20 permit to any part of [~~such~~] the designated or specified tract
21 without penalty or forfeiture.

22 G. Periods of nonuse when water rights are acquired
23 and placed in a water conservation program, which has been
24 approved by the state engineer, by a conservancy district
25 organized pursuant to Chapter 73, Articles 14 through 19 NMSA

Underscored material = new
[bracketed material] = delete

1 1978 or an acequia or community ditch association organized
2 pursuant to Chapter 73, Article 2 NMSA 1978 or the interstate
3 stream commission shall not be computed as part of the four-year
4 forfeiture period.

5 H. Water that has been determined to be conserved
6 water by the state engineer pursuant to the Water Conservation
7 Incentives Act shall not be forfeited, provided the person
8 exercising conservation measures initiates a new use or
9 transfers the use of the conserved water within ten years after
10 the determination of conserved water."

11 Section 8. Section 72-12-8 NMSA 1978 (being Laws 1931,
12 Chapter 131, Section 8, as amended) is amended to read:

13 "72-12-8. WATER RIGHT FORFEITURE. --

14 A. When for a period of four years the owner of a
15 water right in any of the waters described in Sections 72-12-1
16 through 72-12-28 NMSA 1978 or the holder of a permit from the
17 state engineer to appropriate any such waters has failed to
18 apply them to the use for which the permit was granted or the
19 right has vested, was appropriated or has been adjudicated, the
20 water rights shall be, if the failure to beneficially use the
21 water persists one year after notice and declaration of nonuser
22 given by the state engineer, forfeited and the water so unused
23 shall revert to the public and be subject to further
24 appropriation; provided that the condition of notice and
25 declaration of nonuser shall not apply to water which has

Underscored material = new
[bracketed material] = delete

1 reverted to the public by operation of law prior to June 1,
2 1965.

3 B. Upon application to the state engineer at any
4 time and a proper showing of reasonable cause for delay or for
5 nonuse or upon the state engineer finding that it is in the
6 public interest, the state engineer may grant extensions of
7 time, for a period not to exceed [~~three years~~] one year for each
8 extension, in which to apply to beneficial use the water for
9 which a permit to appropriate has been issued or a water right
10 has vested, was appropriated or has been adjudicated.

11 C. Periods of nonuse when irrigated farm lands are
12 placed under the acreage reserve program or conservation reserve
13 program provided by the Food Security Act of 1985, P.L. 99-198,
14 shall not be computed as part of the four-year forfeiture
15 period.

16 D. Periods of nonuse when water rights are acquired
17 and placed in a water conservation program adopted by an
18 artesian conservancy district, conservancy district or the
19 interstate stream commission shall not be computed as part of
20 the four-year forfeiture statute.

21 E. A lawful exemption from the requirements of
22 beneficial use, either by an extension of time or other
23 statutory exemption, stops the running of the four-year period
24 for the period of the exemption, and the period of exemption
25 shall not be included in computing the four-year period.

Underscored material = new
[bracketed material] = delete

1 F. Periods of nonuse when water rights are acquired
2 by incorporated municipalities or counties for implementation of
3 their water development plans or for preservation of municipal
4 or county water supplies shall not be computed as part of the
5 four-year forfeiture statute.

6 G. Periods of nonuse when the nonuser of acquired
7 water rights is on active duty as a member of the armed forces
8 of this country shall not be included in computing the four-year
9 period.

10 H. The owner or holder of a valid water right or
11 permit to appropriate waters for agricultural purposes
12 appurtenant to designated or specified lands may apply the full
13 amount of water covered by or included in that water right or
14 permit to any part of ~~[such]~~ the designated or specified tract
15 without penalty or forfeiture.

16 I. Water that has been determined to be conserved
17 water by the state engineer pursuant to the Water Conservation
18 Incentives Act shall not be forfeited, provided the person
19 exercising conservation measures initiates a new use or
20 transfers the use of the conserved water within ten years after
21 the determination of conserved water."